IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

CRL.A.No. 2370 of 2006()

SC.166/2005 of ADDL.SESSIONS COURT (ADHOC)III, TRIVANDRUM
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APPELLANT/ACCUSED:

SUDARSANAN @ PODIYAN, S/O. KRISHNAN,
S.S.NIVAS @ VAZHAPPANAYIL VEEDU,
MUDAPURAM DESOM, KIZHUVILOM VILLAGE.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JOHNY THOMAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL, HIGH COURT
BUILDING, ERNAKULAM. (DETECTIVE INSPECTOR CBCID,
SIG I MUTTADA, THIRUVANANTHAPURAM.)

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

Crl. Appeal No. 2370 of 2006

Dated this the 27th day of February, 2007

Judgment

Koshy, J.

Appellant was the sole accused in Sessions Case No.166 of 2005 on the file of the Additional Sessions Court (Fast Track) III, Thiruvananthapuram. He was convicted and sentenced to undergo rigorous imprisonment for life for offences punishable under section 302 of the Indian Penal Code. The allegation was that on 13.11.2000 at about 6.30 p.m., the accused hit deceased Kumar with MO2 torch containing two pieces and thereafter, he stabbed Kumar at his neck and on the back of the right leg with MO15 knife. Thereafter, Kumar was stabbed with a broken bottle on the front of the left upper thigh and also caused injuries on his right ankle and the deceased succumbed to the injuries at the lap of one Usha, PW1. It was alleged that accused warned the deceased not to go to the house of PW1 and further stop the relationship between him and PW1. PW1 and the accused are relatives. The motive alleged was that the appellant had warned the deceased Kumar not to go to the house of PW1 and stop

his relation with PW1 as there was allegation that PW2, child of PW1 named Radhika, was born to the deceased out of the illicit relationship. There was a further allegation that daughter of the accused Suja was in love with another person called Sahus and the deceased were in love and accused had seen them together in the house of the appellant and on the allegation that deceased was helping their relationship against the wish of the accused there were quarrel and they were in inimical terms. The alleged incident occurred at a place called Kadappuram near the house of PW1. Ext.P18 first information statement was given by the brother of the deceased. However, he was not examined as he was in Gulf at the time of trial. Ext.P1 was marked by the police officer who recorded the same. Admittedly, the person who gave the First Information statement has not seen the incident. On coming to know of the death of his brother, he informed the matter to the police.

2. PW1 denied the entire allegations made by the prosecution. She stated that accused is related to her. She further stated that she had no relationship with the deceased. She again stated that she was married to one Rajan and after separating from him, she

was living with one Suresh and at the time when the incident happened, her second child was aged four and a half years and now aged ten and a half years. She further stated that the deceased had married to one Sheeja. She also deposed that on 14th November at about 7 o'clock in the evening she heard a sound while she was teaching her children and she went out of the house and saw the dead body of the deceased. It was stated that she went there only after other people gathered. Even though she was declared hostile and cross-examined by the prosecution, nothing came out from her in favour of the prosecution. She was totally against the prosecution. Since her examination was of no help to the prosecution, to prove the incident or even to prove the motive, in fact, the alleged motive is disproved by her. PWs 2 and 3, children of PW1, gave a similar story and their evidence are also of no help to the prosecution. PWs 4 and 5 are husbands of the sisters of the deceased and PW7 is a person in the locality. They are not occurrence witnesses and their evidence was not relied on by the trial court in convicting the accused.

3. PWs 8 and 9 were examined as occurrence witnesses and the Sessions Court believed their version

and, on that finding, came to the conclusion that the accused was guilty. Now, we will consider the evidence of PWs 8 and 9 in detail. PWs 8 and 9 are related persons and was also related to the deceased. PW8 stated that on 13.11.2000, he went to the house of his sister and was returning with PW9. At that time, he saw the accused and deceased quarreling and accused hit the deceased with a torch and the torch broke into two pieces and PW1 Usha, who was present there at that time, tried to remove the deceased, but, in that process, lunki of the deceased fell down and Usha gave a small thorthu (towel) and she asked her son PW2 to bring another lunki and that the quarrel ended there. After they went further, again they heard cries. When they came back, they saw Kumar lying dead in the lap of PW1. Since he was a T.B. patient, he went back to the home. In cross-examination, he stated that he was married while he was at Bombay from 1974-80. The deceased was related to him. He also stated that one Sheeja, wife of another person, was not seen after delivery, but, later, Police produced the deceased and Sheeja with the child before the Court. Later, Sheeja was living with the deceased. The deceased used to go to Gymnatium and he was a well-built man. He

also stated that the place of incident is 3 k.ms. away from his house and no bus service was available to go to the place of incident. He further stated that he came there by walking as an exercise. If that be so, even though he is a T.B. patient, he walked 6 k.ms. He also stated that for the first time he visited the sister's house and after the incident, he went back to Bombay. He stated that he was not telling the matter to help the prosecution. He also stated that he found Kumar lying near the electric post in front of the house of Usha, that he does not know the reason for the incident, that there was talk that many people joined together to kill Kumar and that he is not aware how Kumar sustained injuries. He stated as follows:

He also stated that on his return he saw that the deceased was lying in the lap of PW1. PW9, who is an uncle of PW8, also gave almost similar evidence. It is very difficult to believe the evidence of PW8 because, according to him, he is a TB patient and he came by walk and returned by walk for the purpose of exercise. According to him, he was at Bombay before the incident and after the incident also he went to Bombay and for the first time he visited the sister. The entire evidence appears to be believable. Apart from the above, according to PW8, he and PW9 were together and they saw the first part of the incident and they did not interfere in the same or wait there or talked to anybody regarding the same even though they saw others also going in that way possibly following them. Further, after seeing the incident and after seeing the deceased lying with bleeding injuries, they did not call any taxi or they did not ask the help of PW1 for taking the deceased to the hospital or getting medical aid. Even though deceased was related to them, they never interfered in the dispute. After seeing the quarrel, they walked away and then after hearing the matter, they went back home peacefully. Before questioning by the police after two

days of the incident, they did not disclose the matter to anybody except the mother of PW8 even though he saw the deceased with bleeding injuries, (mother was not examined to verify). He deposed as follows:

Their conduct and evidence as a whole are suspicious.

4. Apart from the evidence of PWs 8 and 9 whose evidence are not reliable, the prosecution relied on the recovery evidence. MO15 knife was recovered from the house of accused at the instance of the confession given by the accused. Attesting witness became hostile as he has not seen the recovery. Chemical analysis report shows that the blood on the material objects was found insufficient to determine the origin and group. Material objects were recovered on 23.11.2000 after ten days of

the incident. They recovered from the bottom of a coconut tree.

5. Ante-mortem injuries noticed in Ext.P13 port-mortem certificate by PW27 doctor who conducted the autopsy are as follows:

> "1. Incised penetrating wound 4.5 x 1.6 c.m. almost vertical on the front of right side of neck, the upper end showed splitting of tissues was 1.5 c.m. to right of mid line and 5 c.m. above the level of top of wrist bone. Severing the right external jugular vein, transfixed the right sternomastoid muscle and the internal jugular vein, pierced the apical pleura and terminated on the apical lobe of right lung making a cut 0.8 x 0.2 x 0.2 c.m. The right chest cavity contained 800 m.l. of blood with clots. The right lung was partially collapsed. The wound track was directed downwards and backwards for a minimum depth of 5.5 c.m.
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> 2. Incised penetrating wound 3 x 1.8 c.m. oblique on front of left upper thigh, the upper inner end of which showed splitting of tissues was 6.5 c.m. to left of pubic symphysis. The wound track was directed backwards and to the right for a depth of 5 c.m. through the muscle plane.

3. Incised penetrating wound 7.5 x 4 c.m. oblique on the back of right leg. The upper inner end which showed splitting of tissues was 3 c.m. below middle of the knee. Severing the popletial artery and piercing through the calf (back of leg) muscle made an exit 4.5 x 1.6 c.m. on the outer aspect of the leg, the upper inner end of the exit wound was 5 c.m. below the level of the knee and the wound track was directed downwards forwards and to the right for a depth of 8 c.m. The other end of injuries 1 to 3 were sharply cut.

4. Incised wound 2 x 0.3 x 0.4 c.m. slightly oblique on inner aspect of right ankle.

5. Abrasion 1 x 1 c.m. on front of right leg 17 c.m. below the knee.

6. Abrasion 3 x 2 c.m. on front of left knee.

7. Abrasion 2 x 0.1 c.m. oblique on fr0ont of chest. The lower inner end being 6 c.m. to left of mid line and 22 c.m. below the level of collar bone.

8. Contusion 8.5 x 0.5 c.m. skin deep oblique on front of left arm, its upper outer end 7 c.m. below tip of shoulder."

Opinion as to cause of death was due to injury Nos.1 and 3. He also stated that injury Nos.1 and 3 can be caused

by weapon like MO15. It is also stated that on chemical analysis of the viscera and blood, alcohol was found from the body. Item No.3 blood sample contained 69 mgm of ethyl alcohol per 100 ml. of blood. Doctor also stated that he cannot rule out the possibility of inflicting injuries noted in Ext.P12 by different persons with different weapons. He also stated that even though the deceased was a well-built man, he did not notice any defensive wounds. He further stated that he cannot rule out the possibility of injury Nos.1, 2 and 3 can be caused by different persons simultaneously. Evidence would also show that the victim was intoxicated fully at the time. Postmortem certificate shows that the deceased was murdered brutally. It has also come out in evidence that the deceased had illicit relationship with various persons and he was a Karatte champion and a well-built man. Since the culprits were not found, there was protest and an action council was formed and thereafter only the case was registered against the accused. According to the counsel for the appellant, since the culprit was not found out, to save the real accused, a false case was registered against the accused. However, these allegations were strongly denied by the

investigating officer. It was argued by the appellant that a person like him alone will not be able to cause such injuries to a strengthy built man by the deceased. We are of the opinion that since PWs 1 to 3 became hostile and their evidence did not support the prosecution on any manner, without the evidence of PWs 8 and 9, we cannot connect the accused. PWs 8 and 9 were telling artificial stories and the evidence, as a whole, would show that they were only helping the prosecution. Merely because there is relationship with the deceased, their evidence cannot be thrown away, but, evidence of such persons has to be examined very carefully and merely on the basis of recovery of the weapon alone, we are unable to convict the accused especially when the blood found on it was insufficient for determining whether it is human blood or not especially in the background that the recovery witness also turned hostile.

In any event, we are of the view that prosecution was not able to prove the case beyond reasonable doubt. Hence, conviction and sentence passed on the accused are set aside. The accused is directed to

be released forthwith, if he is not required in any other case.

Appeal is allowed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

Crl.Appeal No.2370/2007

Judgment

Dated:27th February, 2007